

Decision on the Town of Chatham Request for Approval of the
Chatham Comprehensive Harbor Management Plan
Pursuant to 301 CMR 23.00

Friday, August 19, 1994

Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Trudy Coxe, Secretary

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I. INTRODUCTION

Today, I am approving the Chatham Comprehensive Harbor Management Plan for Me Stage Harbor system. My approval is pursuant to the municipal harbor planning (MHP) regulations at 301 CMR 23.00 and covers Volumes I and II, dated March, 1992, and December, 1993, respectively. The effect of this Decision Is to establish a joint venture of the State and the Town, with the former establishing the basic regulatory framework and the latter providing a more detailed plan with harbor-specific guidance for the Department of Environmental Protection's (DEP) review of Chapter 91 license applications. This will result In DEP decisions that are tailored more effectively to local needs and circumstances, to the benefit of the public-at-large as well as affected property owners.

This Decision presents my findings and determinations on how the Chatham Comprehensive Harbor Management Plan (hereafter the Plan) satisfies each of the standards that must be met in order to approve an MHP. Pursuant to the MHP regulations, these standards can be summarized as follows:

1. The plan must be consistent with all applicable Coastal Zone Management Policies and Harbor Planning Guidelines [301 CMR 23.05 (1)-(2)1;
2. The plan must be consistent with State Tidelands Policy objectives and associated regulatory principles, as set forth in the Waterways regulations of DEP [301 CMR 23.05(3)];
3. The plan must include all feasible measures to achieve compatibility with the plans and planned activities of all State agencies owning real property or otherwise responsible for the implementation or development of plans or projects within the harbor planning area [301 CMR 23.05(4)1; and
4. The plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken In a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained In the Waterways regulations [301 CMR 23.05(5)].

II. COMPLIANCE WITH CZM CONSISTENCY REQUIREMENTS

A. Consistency with CZM Policies

In 1978, the Executive Office of Environmental Affairs (EOEA) adopted an overall program to manage the Massachusetts coastal zone, In the form of Coastal Zone Management (CZM) regulations containing 27 broad statements of policy. I find that the Plan is consistent with such policies, as required by 301 CMR 23.05(2). In Volume II of its Comprehensive Harbor Management Plan, dated December, 1993, the Town has documented that the Plan correlates in numerous ways with each of the relevant policy statements. Evidence to this effect is found throughout the body of the Plan.

B. Consistency with the Harbor Planning Guidelines

To approve a municipal harbor plan, I also must determine that It Is consistent with the Massachusetts Coastal Zone Management's (MCZM's) *Harbor Planning Guidelines* (Revised, 1988). Generally, the criteria for such consistency would be defined in the Scope for a plan, where I would specify how to apply these Guidelines to a particular municipality. However, no Scope is available in this case, since my review of Chatham's Plan has taken place under the transition procedures of the MHP regulations. Therefore, I have evaluated the Plan in terms of its consistency with the underlying spirit and intent of these Guidelines. For this level of evaluation, there are two basic Issues that need to be considered: plan coverage and plan content.

1) Plan Coverage

Plan coverage involves both the geographic scope of the planning area and the range of issues considered. The Guidelines allow ample discretion on the part of a community in the choice of plan coverage, subject to a clearly stated requirement of "comprehensiveness." To be consistent with this requirement, a plan must: define a harbor planning area that encompasses all areas relevant to the effective use and management of the harbor and all filled tidelands subject to DEP jurisdiction; and address all significant and Interrelated land- and water-use issues.

The geographic coverage of the Plan is clearly comprehensive, insofar as the overall planning area encompasses the entire Stage Harbor system, including all waters of the system and the land areas functionally tied to this system, either environmentally or culturally. Waters include Stage Harbor, Oyster Pond and River, Mill Pond, and Mitchell River. Landside boundaries are defined by the groundwater recharge, storm-water drainage, sea-level rise/coastal storm hazard, and viewshed, and public access/ownership areas. DEP has certified that land areas incorporate all filled tidelands subject to its jurisdiction.

The Plan identifies a considerable range of significant Issues that reflect the objectives of the Waterways program: - providing for a balance of uses, public access, harbor navigation and safety, facilities for commercial fin- and shell-fishing and recreational boating, and protection -of water quality, natural resources, and visual character.

The Plan treats the Interrelationship between significant water-use and land-use issues. A prime example of this is the Plan's in-depth analysis on the key Issue of maintaining water quality for shellfishing. As part of this analysis, the Plan assesses the impact of existing and potential development on the nitrogen contamination of the harbor and its shellfish resources. Another example is the Plan's recognition of the relation between development potential, population growth, demand for water-related recreation and facilities, and conflicts among harbor uses in an area of limited environmental and spatial carrying capacity. This recognition has led to one of the Plan's main goals, i.e., providing for an appropriate balance of uses.

I find that the Plan addresses a coherent set of land- and water-side issues appropriate to the geographic scope of the Stage Harbor system. In its breadth of coverage of these significant issues, the Plan meets the comprehensiveness requirement of the Harbor Planning Guidelines.

2) Plan Content

The MHP regulations require every plan to incorporate four basic elements: 1) a statement of goals and objectives and the corresponding applied policies to guide development in terms of Its desired sequence, patterns, limits, and other characteristics; (2) an implementation program; (3) planning analysis that takes into consideration technical data, community Input, and other Information that serves as the basis for evaluating tradeoffs among alternatives and choosing preferred courses of action; and, (4) a review of the public participation program. The Interrelationship among these elements should be reflected in the content of the plan.

(a) Goals and Applied Policies

Section IX of the Plan identifies the goals and policies relating to each identified issue, as well as a corresponding action plan.

The action plan is generally conceptual in approach and identifies additional planning policies. Nine actions are proposed, addressing some Issues and goals more completely than others. Actions concerning the protection of water quality and designation of mooring areas provide detailed specifications on implementation commitments and are followed-up with some recommended regulatory amendments (e.g., to the zoning, wetlands, waterways, and board of health regulations), guidelines (e.g., Stage Harbor System Use Guidelines), and plans (e.g., Stage Harbor Mooring Plan), included in the appendices to the Plan. Other actions serve to identify, in broad terms only, the additional planning tasks to be undertaken to fully address gods of the Plan, In particular, those concerning the enhancement of public access and protection of views and visual character. Follow-up on these has not yet taken place.

The action plan articulates the vision of the Plan, the basis for this vision, and the broad framework for the Plan's policy decisions. The vision calls for a conflict-free, multi-use harbor, one that maintains the tradition of a variety of uses, while ensuring that these uses exist in harmony, with careful attention paid to protecting and enhancing natural resources, including habitat and fisheries. The Plan is intended to provide rational support for its recommended vision. Analysis that has been undertaken li intended to demonstrate that the historical multi-use character is one well-suited to the harbor, when managed, and that a particular management program has been proposed that attempts to balance uses in ways consistent with the Town's specific goals. A summary of the results of this analysis is provided; it indicates that Stage Harbor itself is capable of accommodating a broad range of uses because of its size, location, and degree of flushing and water depths, but that other waters of the system, which possess an abundance of prime shellfish habitat, need more limitations on use because of limited water depths and flushing rates that make them more vulnerable to degradation. The Stage Harbor System Use Guidelines, attached in Appendix C, which largely govern moorings, are based on this analysis.

(b) Implementation Program

The Plan presents a comprehensive implementation program. A matrix, contained in Volume II, summarizes the Town's implementation commitments and identifies the measures, regulatory or financial, necessary to carry out each recommended action as well as the local board to have lead responsibility. While a more detailed strategy has not been developed as yet, this matrix provides the framework for this next step, which I recommend be completed. This strategy should specify the schedule and budget, including an associated capital improvement program, necessary to carry out the Plan.

Regulatory measures of the implementation program fall into four categories, listed below in hierarchical form In accordance with their adoption status: 1) measures recommended as a result of the planning process but not yet presented In a form suitable for adoption; 2) regulatory measures recommended as a result of the planning process presented in a form suitable for adoption; 3) recommended measures that have been adopted or otherwise carried out; and 4) regulatory measures existing prior to the planning process but consistent the plan's policies and proposed as amplifications of the State Waterways regulations. A sufficient number of measures fall under categories two and three to indicate that progress in implementation is substantial.

The Town's Implementation program is not proceeding in accordance with a list of priorities. Viewing all issues as inter-related, the Town saw no basis for prioritizing them. However, the Plan's vision suggests that establishing harbor use zoning districts is an action central to the Implementation of the Plan. For this reason, I recommend that the implementation schedule for this action reflect this consideration.

In making this recommendation, I recognize that zoning the water is a complex matter with little precedent in Massachusetts, and I offer what support my agency can provide for this undertaking. I encourage you to take advantage of the technical assistance available from MCZM, when you are prepared to Implement this action.

(c) Planning Analysis

I find that the scope of the Plan's analyses is significant for a single planning effort. Through providing rational support for the Plan's recommendations, this analysis has helped the Town achieve a consensus on a broad vision for the Stage Harbor system.

Analysis In the Plan provides a helpful understanding of the harbor's environmental carrying capacity and the impact of alternative actions to prevent exceeding this capacity. In-depth analysis of potential impacts on the water quality and natural resources of the harbor system is conducted. The impacts at buildout on nitrogen loading are assessed as well as the Impacts of shoaling and dredging, and the flushing rates resulting from these activities, on nitrogen loading.

The Plan recognizes that spatial capacity is another aspect of the harbor's carrying capacity. A mooring layout plan and harbor use districts are actions recommended in acute awareness that the spatial capacity of the harbor is limited. While additional in-depth analysis was beyond the scope of this planning effort, further assessment of spatial impacts at a level comparable to that conducted on water quality impacts would contribute to understanding the full range of limitations on the harbor system. For example, an evaluation of the impacts of expanded boating use on spatial capacity of the

harbor's waters and its navigational channels would help in decision-making about expanding boater access. In particular, detailed analysis of the spatial needs of various types of boating activity, projected increases in such activity under various scenarios, and the impacts of these increases on harbor congestion, can be used to determine appropriate intensity of use and corresponding management measures.

As the Plan suggests, spatial and environmental capacity considerations overlap. Spatial considerations need to take into account the location of valuable benthic habitats, e.g., shellfish and eel-grass both to preserve access to this habitat and to protect this habitat from activities demonstrated to be harmful.

While my hope is that my suggested guidance will help the Town in making decisions about the details of its broad vision for the Stage Harbor system, my present approval is not contingent upon Its compliance with these recommendations.

The results of data collection and analysis on the harbor planning area are illustrated on an extensive set of maps included in the Plan. Unfortunately, the methods used to code information on these maps and the quality of reproduction made much of this information inaccessible. In future planning efforts, the Town should ensure that selected mapping techniques will be readable upon reproduction and reduction in a planning report. I also recommend use of other map sources available under the State Geographic Information Systems and Wetlands Conservancy Programs.

(d) Public Participation Program

Section II of the Plan documents the extensive public participation program that occurred during the five-year plan development process. This program consisted of the principal ways recognized as providing for early and continuing public input, including formation of a harbor planning committee with a membership representative of the various harbor interest groups, periodic open meetings of this committee, and public meetings at key junctures in the process. In addition, the forward to the Plan includes letters from key-Town boards and commissions, demonstrating the breadth of involvement and support of local government. In its broad outreach to the citizenry and coordination with municipal boards, the public participation program appears to have been well-designed to promote local acceptance and Implementation of the Plan.

Based on the foregoing, I find that the Plan's content sufficiently Incorporates the four basic plan elements required by the MHP regulations.

III. COMPLIANCE WITH TIDELANDS CONSISTENCY REQUIREMENTS

A. Introduction

I must further determine the consistency with the specific objectives and principles of the tidelands regulations embodied in 310 CMR 9.00, to ensure that the Plan also serves positively to augment State requirements as applied on a case-by-case basis. To make this determination, I have undertaken a broad review of all Town standards and requirements associated with the Plan as contained in a variety of existing and proposed local regulations. The results of my review are set forth below.

Appendix A of Volume I of the Plan includes proposed amendments to the following local bylaws and regulations: the zoning and waterways bylaws, wetlands regulations, and Board of Health regulations governing the handling and storage toxic or hazardous materials. Because these are in draft form, they are not appropriate to include in the Approved Plan at this time and I have made no finding with regard to them. These proposed regulations and bylaws may be resubmitted at a later time for consideration for incorporation In the Approved Plan under the amendment procedures of the MHP regulations.

I am making one exception, however, in conditionally approving a draft set of mooring requirements. Because the recommended local provisions concerning mooring policy directly connect with specific discretionary requirements of the Waterways regulations, and are intended to amplify upon these regulations in concert with other local provisions that have been adopted, I find these acceptable as amplifications on the condition that they are enacted, as specified below. With regard to both these and other proposed changes to the bylaws and regulations, which the Town Intends as amplifications of the State Waterways regulations, I recommend that they be resubmitted for my review when they are in final draft form. In this way, any revisions I may suggest may be accomplished prior to local adoption. MCZM is available to provide any technical assistance the Town may request in the further development of these local implementation measures.

Appendices of Volume II of the Plan Include the following sets of previously enacted local bylaws and regulations: Article V of the waterways bylaws, the zoning bylaws, the Town landing regulations, sign regulations, and the Board of Health regulations governing sewage discharge permits. My findings concerning these are as follows.

I find that no provisions of these existing regulations and bylaws constitute substitutions for provisions of the State Waterways regulations; that is, no provisions are appropriate as alternative requirements which, if approved In accordance with various stated criteria, can serve as the basis for a DEP waiver of up to seven specific use limitations and numerical standards affecting nonwater-dependent use projects. Therefore, the set of plan approval standards concerning substitutions are not applicable.

Some provisions, standards, and requirements of existing regulations Included in the Plan do directly correspond with the discretionary requirements of the Waterways regulations. These are evaluated below in accordance with the plan approval standards of the MHP regulations.

Because the extent of my approval is limited to certain portions of the submitted Plan, it is appropriate that a final Plan be compiled that consists of approved elements only. The submitted Plan

should be boiled down to its operative elements, with all extraneous material deleted. (See Requirement 2.) Condensing the Plan to its approved elements should facilitate its implementation as well as lessen the reproduction costs associated with Its distribution.

B. Evaluation of Amplification Provisions

Sections VI and VII of Volume II highlight the features of the Town's Plan and current regulatory program that support the primary State Tidelands Policy objectives, as set forth in 301 CMR 23.05(3)(a). My examination of the Plan and the applicable regulations included in its appendices confirms that a high degree of consistency exists with those objectives.

The MHP regulations require me to find that any provision that amplifies a discretionary requirement of the Waterways regulations will be complementary in effect with the regulatory principle(s) underlying that requirement. Upon such a finding, DEP is committed to 'adhere to the greatest reasonable extent' to the applicable guidance specified in such provisions, pursuant to 310 CMR 9.34(2)(b)(2). DEP has indicated that there are nine local provisions that elaborate upon six specific waterways requirements in the highly particularized mariner contemplated by the regulations. I concur with DEP's recommendation that seven of these local provisions can be approved as written. In the case of two provisions or policy areas, one concerning dredging requirements adopted in zoning and a second on the Town's mooring policy, I have imposed qualifications on my approval. Below I identify the specific State Waterways regulations and corresponding local provisions I have approved as amplifications of these regulations. Where my approval is qualified, I identify the specific conditions on my approval and the basis for these conditions.

1) On-Foot Passage

State Waterways regulation	310 CMR 9.35 (3)(b)(1): On-Foot Passage - The project shall allow continuous, on-foot, lateral passage by the public by maintaining at least a five-foot clearance above the ground along the high water mark or by providing a stairway for the public to pass laterally over such structures.
Local provision	Chatham Zoning Bylaw, Article 9, Section IV (A) (6) (c) (2) (d) on private piers is acceptable as an amplification of the above State Waterways regulation (1), as follows: The height of the deck (walkway) shall not exceed four feet (4) above Mean High Water (MHW) unless in the Interest of preserving marsh growth, a greater height is required; in which case the height above the marsh shall not exceed 1.5 timber the width of the dock.

As a result of this amplification, piers licensed by DEP shall have four-foot high stairs, when a stairway to preserve on-foot passage is required.

2) Public Rights Applicable to All Waterways

State Waterways regulation At 310 CMR 9.35 (2, 3 and 4): **Public Rights Applicable to All Waterway** - The project shall not significantly Interfere with the public rights of fishing, fowling, and navigation in private tidelands, and public rights to use Commonwealth tidelands for any lawful purpose.

Local provisions Chatham Zoning Bylaw, Article 9, Section IV (A) (6) (c) (1) and (A) (6) (c) (2) (b and C) on **private piers** is acceptable as an amplification of the above State Waterways regulation (2), as follows - Concerning all new residential piers: permanent piers shall not be permitted unless a specific navigation need can be demonstrated; no stairs, pier, or ramp shall exceed four feet (4) in width; the total area of any and all floats associated with a pier shall not exceed three hundred (300) square feet and there shall be no floats above Mean Low Water (MLW).

A pier is a special permit use under the Town's zoning, which requires approval by the Zoning Board of Appeals. On all special permits there is a negative presumption that must be overcome by the applicant, i.e., that the use will not be detrimental to adjacent properties, the neighborhood, or the Town in general, in the case of a permanent pier, the presumption is more stringent in that a seasonal pier can be permitted as an alternative. A private permanent pier is permitted only if it meets all of the requirements of Section IV(A)(6) of the zoning and if it is sufficiently demonstrated to the Board of Appeals that a seasonal pier would not be workable because of specific conditions of the site (e.g., prevailing wind direction) or characteristics of the vessel to be docked (e.g., size, year-round use). I find that this special permit process, when carried out in accordance with these criteria, as indicated in the Town Planning Director's letter of July 27, 1994, concerning the demonstration of a specific navigation need, sufficiently defines the parameters within which such process shall operate. As a result, I find that a special permit decision on a residential permanent pier by the Board of Appeals in accordance with these criteria is an acceptable amplification of the State Waterways regulation cited at 2) above. While my approval is not conditional, I recommend that the criteria on demonstration of specific navigation need be codified in bylaws or rules and regulations.

Local provisions The following two zoning bylaws are also acceptable as amplifications of the State Waterways regulation cited at 2), above:

Chatham Zoning Bylaw, Article 9. Section IV (A) (6) (c) (2) (a) on private piers - No new pier shall exceed eighty feet (80') in overall length measured from the MHW line.

Chatham Zoning Bylaw, Article 9, Section IV (A) (6)(c)(3) on depth of water - At MLW there shall be, without the benefit of dredging, at least two and a half feet (2 1/2') of water at the end of the pier and/or float system.

3) Mooring Assignment; and

4) Terms and Conditions of Annual Harbormaster Permit

State Waterways regulation 310 CMR 9.07(2): Mooring Assignment - The harbormaster shall provide a written procedure for fair and equitable assignment from a waiting list for use of vacant or new moorings pursuant to this section. Any such assignments shall be consistent with the municipal harbor plan, if any. Methods for mooring assignment that are appropriate include, but are not limited to, one or more of the following: a) date of application; b) physical characteristics of vessel, e.g., size and type; and, c) purpose of vessel (commercial vs. recreational or public vs. private). The harbormaster, however, may allow the previous permit holder to renew, on an annual basis, that mooring or another mooring within the control of the harbormaster. In any event, such a procedure shall not discriminate against any citizen of the Commonwealth on the basis of residency, race, religion, sex, age, disability, or other illegal distinction. A copy of said procedure shall be sent to the Department and kept on file.

310 CMR 9.07(3)(d)(e): **Terms and Conditions of Annual Harbormaster Permit** - No such permit may authorize unreasonable Interference with the public rights of fishing, fowling, and navigation In tidelands and Great Ponds.

Local provisions

The mooring Policy adopted in the Comprehensive Harbor Management Plan Is proposed as amplification of the State Waterways regulations cited at 3) and 4), above:

All moored vessels shall be clear of navigational fairways at all times. Moorings shall be located in accordance with a mooring plan. The number of moorings shall be limited throughout the Stage Harbor system, at the discretion of the Harbormaster, to the 1990 level. Stage Harbor shall serve as the primary mooring area, with less intense mooring space allocated in other waters. Adequate mooring space shall be provided for the commercial fishing fleet in the future. Town moorings shall be provided for use by transient vessels.

My approval of these policies concerning the location, number, and allocation procedures for moorings, for the purpose of amplification of the above Waterways regulations, shall be contingent upon the following: a) demonstration that corresponding regulatory measures have been enacted; and b) submission of written mooring assignment procedures to DEP.

5) Dredging & Resource Protection Requirements

State Waterways regulation	310 CMR 9.40 (2)(b): Dredging & Resource Protection Requirements - The design and timing of dredging and dredged material disposal activity shall be such as to minimize adverse impacts on shellfish beds, fishery resource areas, and submerged aquatic vegetation.
Local provisions	<p>The following sections of local zoning and policy in the adopted Comprehensive Harbor Management Plan are proposed for amplification upon the State Waterways regulation at 5), above:</p> <p>Chatham Zoning Bylaw, Article 9, Section IV (A) (4)(b) on -Prohibited uses in the Conservancy District - Except those needed to accomplish the above permitted uses, no person shall drain, excavate, or <i>dredge in</i> a conservancy district, or remove loam, peat, sand, soil, or other material substance.</p> <p>Chatham Zoning Bylaw, Article 9, Section IV (A) (2) (g, j, and k) – Permitted uses in the Conservancy District include: the dredging of navigational channels or mooring basins by the Town, State, or Federal government; maintenance dredging of existing private channels and marine facilities provided that such maintenance dredging shall not increase the scope of the original dredge project licensed under MGL Ch. 91; and expansion dredging of existing private channels or marine facilities with the approval of the Shellfish Warden, Conservation Commission, Division of Marine Fisheries, Division of Waterways, and the U.S. Army Corps of Engineers. Said expansion shall be accomplished without dredging in marsh areas or land containing shellfish, as identified by the Shellfish Warden and Division of Marine Fisheries.</p> <p>Dredging policy adopted under Action 4(b) in the Comprehensive Harbor Management Plan, as follows: Except in areas where dredging is required to enhance navigational safety, dredging in these areas should be discouraged in order to limit both the short-term and long-term impacts on shellfish habitats and resources including destruction of eelgrass beds and resuspension of sediments.</p>

Based on consultation with the Town, I have concluded that a) the local zoning provisions cited above require clarification to ensure consistency with the communities' intent; and b) those aspects of dredging policy adopted in the Plan under Action 4(b) and cited above are not yet codified in existing zoning. As a result, my approval of these proposed amplifications of the State Waterways regulations at 5), above, shall be contingent upon adoption of amendments to the zoning bylaw: a) clarifying the conditions under which dredging projects are allowable, particularly expansion dredging projects; and b) Implementing the Plan's dredging policies that are cited above. In responding to a), the Town should make clear its intent with regard to allowing the expansion dredging of a new private marine facility

associated with a marina or support services for commercial fishing. In doing so, it should also clarify whether new branches off of existing private channels are an allowable form of expansion dredging. Finally, it should define the distinction between “shellfish habitat” and “lands containing shellfish” and its policy with regard to dredging in each of these areas.

6) Access to Town Landings

State Waterways regulation 310 CMR 9.35(2)(c): **Access to Town Landings** - The project shall not significantly Interfere with public rights associated with a common landing, public easement, or other historic legal forms of public access from the land to the water that may exist on or adjacent to the project site.

Local provisions Town of Chatham **Town Landing Regulations** are acceptable as amplifications of the State Waterways regulation cited at 6), above. In brief, these local regulations provide for the following: use for customary marine purposes; no business transactions except for commercial fishing catch; boat ferry or water taxi services allowed; pets and other livestock restrained; roadways and emergency vehicle lanes kept open and free; no reservation of parking spaces, except as assigned by the Town; no vehicle travel or stopping of established ways or parking areas; no deposit of rubbish or removal of sand or growth without permission of board and conservation commission; hours of use limited per regulations; and penalties per regulations.

IV. COMPLIANCE WITH OTHER APPROVAL STANDARDS

A. Relationship to State Agency Plans

The Town has certified that there are no State agencies owning real property adjacent to or on filled or flowed tidelands of the Stage Harbor system and that it knows of no State plans that would affect the Stage Harbor system.

B. Enforceable Implementation Commitments

Important elements of the Town’s regulatory framework, which existed prior to the development of its Plan, serve to implement the policies of the Plan, particularly, the provisions of the Town’s Coastal Conservancy Zoning District. In most cases, it is policies that have been implemented through current regulations that are proposed for amplification of the State Waterways regulations. As noted above, in only two instances have local policies that have not yet been coddled been proposed for this purpose. Therefore, I have imposed conditions on the approval of these amplifications as well as in a few other instances to ensure compliance with the enforceable implementation standard.

Much of the Plan remains to be implemented through further codification of its policies. In my

judgment, the Plan lays the groundwork for the effective carrying out of this process as a result of commitments incorporated in its action plan and recommended regulations attached in its appendices. Through the plan amendment process, the Town may propose additional amplifications of the State Waterways regulations based on implementation activity occurring subsequent to my approval.

V. REQUIREMENTS

Requirement I (Compliance with Conditions on Approval of Proposed Amplifications)

The following proposed amplifications have been conditionally approved:

- (a) The Town's policies concerning the location, number, and allocation procedures for moorings (see pp. 11-12); and
- (b) Policy in the Plan and sections of the Town's zoning concerning dredging (see pp. 13-14).

To comply with the conditions on the approval of specific local provisions as amplification of the Waterways regulations, the Town shall:

- (a) Prior to adoption of required implementation measures, submit final draft regulations to the Secretary for review; and
- (b) Upon adoption of regulations, provide to the Secretary certification in writing from its municipal clerk that such action has been taken and copies of the enactments in question.

Requirement 2 (Preparation of Approved Plan)

In accordance with the following requirements, the Town shall prepare the Approved Plan for submission to the Secretary:

- (a) The Plan shall consist of a single volume, Incorporating the body of the March, 1992 Plan and adding a copy of this Decision as the final chapter; and
- (b) Its appendices shall include the Stage Harbor System Use Guidelines, the table of "Preliminary Assignment of Responsibilities of Recommended Actions," and the Maps of the Locations of All Filled and Flowed Tidelands and the Stage Harbor Mooring Plan (Maps A and B of Volume 11, dated December, 1993); the body of Volume 11, and all other appendices shall be deleted.

Requirement 3 (Designation of Municipal Body to Have Lead Responsibility on Plan implementation)

The Town's Board of Selectmen shall designate the municipal body to have lead responsibility for plan implementation, and certify this designation to the Secretary. In accordance with the provisions of 310 CMR 9.34(2)(a)(1 and 2), concerning the responsibility of this body on plan implementation: DEP shall presume the requirement that a project conforms with the Plan, as approved herein, is met or not met, based upon a written recommendation of this body, except upon a clear showing to the contrary and except as otherwise provided in the Waterways regulations (see Exclusion VI (b), below, concerning this provision).

Requirement 4 (Plan Amendments)

For Chatham's coastal areas outside the planning area of the Stage Harbor system, where harbor plans have not yet been initiated, the transitional review procedures will not be applicable and the development of a Scope will be required beforehand. The procedure for making substantial additions to an approved plan also requires a Scope.

VI. EXCLUSIONS

For waterways licensing purposes pursuant to 310 CMR 9.34(2), the Approved Plan applicable to a proposed project shall not be construed to Include the following:

- (a) Any local provision from which the project is exempt pursuant to any section of the Town's zoning or other regulations; such section(s) shall not be construed to exempt the project from any applicable requirement of the Waterways regulations at 310 CMR 9.00;
- (b) Any zoning or other provision approved as an amplification of a Waterways regulation from which the project has been granted relief in any form, provided that a determination has been made pursuant to 310 CMR 9.34(2)(a)(2) that the resulting deviation from the plan is *de minimus* or unrelated to the purposes of M.G.L. c. 91 or of the Waterways regulations;
- (c) Any provision that is inconsistent with the Waterways regulations, CZM policy and the Tidelands Policy objectives, or other Federal or State law, regulations, or policies;
- (d) Any subsequent addition, deletion, or other revision to the Plan, including but not limited to changes in zoning maps, text, or other regulations approved for the purpose of amplification of the State Waterways regulations, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23-05 or as a plan amendment in accordance with 301 CMR 23.06(1); early notice of intent to propose any such changes shall be submitted to the Secretary, so that a determination of need for plan amendment can be made in a timely fashion; and

- (e) Any provision that does not preserve rights hold in trust by the Commonwealth for the public to use tidelands for fishing, fowling, or navigation.

VII. EFFECTIVE DATE AND TERM OF APPROVAL

Except with respect to portions of the Plan or any revision thereto subject to further review and approval by the Secretary pursuant to any of the foregoing Requirements, this Decision shall take effect upon the date it becomes final in accordance with 301 CMR 23.04(5). The Decision shall expire on August 19, 1999, unless a renewal request is filed prior to that date in accordance with 301 CMR 23.06(2) (a). No later than six months prior to such expiration date, in addition to the notice from the Secretary to the Town required under 301 CMR 23.06(2)(b), the Town shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of State Tidelands Policy objectives. Nothing in the foregoing requirement, however, shall be construed to prejudice the Town's right to seek renewal of the Approved Plan.

VIII. STATEMENT OF APPROVAL

Based on the information presented to me pursuant to 301 CMR 23-04 and evaluated pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the Plan as the municipal harbor plan for the Town of Chatham. The approval is subject to all requirements, limitations, qualifications, and other conditions set forth in this Decision.

Trudy Coxe, Secretary,
Environmental Affairs

Date: August 19, 1994